IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

FAO.No. 37 of 2007()

AGAINST THE ORDER DATED 20/11/2006 IN IA 665/06 IN OS.32/2000 of SUB COURT, OTTAPPALAM

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APPELLANTS/PETITIONERS/DEFENDANTS.
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1. VIJAYAMMA, AGED 40 YEARS, W/O.DECEASED GOPINATHAN PILLAI, RESIDING AT VECHOOR VEEDU, KARIMBA AMSOM, MANNARKKAD TALUK.

2. RAJI, AGED 22, D/O.DECEASED GOPINATHAN PILLAI, RESIDING AT VECHOOR VEEDU, KARIMBA AMSOM, MANNARKKAD TALUK.

3. RAJESH, S/O.DECEASED GOPINATHAN PILLAI, RESIDING AT VECHOOR VEEDU, KARIMBA AMSOM, MANNARKKAD TALUK.

BY ADV. SRI.SREEKUMAR G.(CHELUR)

RESPONDENT/RESPONDENT/PLAINTIFF:

POULOSE, S/O.ULAHANNAN, PULAPPETTA AMSOM AND DESOM, OTTAPALAM TALUK

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

F.A.O.No.37 of 2007

Dated this the 5th day of March, 2007

JUDGMENT

Kurian Joseph,J.

This appeal is filed against the order dated 20-11-2006 in I.A.No.665/2006 in O.S.No.32/2000 on the file of the Sub Court, Ottappalam. The appellants are the defendants in the suit for specific performance of an agreement for execution of sale. They were set ex parte and an ex parte decree was passed. Appellants filed two applications; one for condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure and the other for setting aside the ex parte decree. The application for condonation of delay was allowed on terms and the conditions were complied with. However, on the date of consideration of the application for setting aside the ex parte decree, it appears from the order that the petitioners' counsel were absent and hence the application was dismissed. Learned counsel for the appellants submits that as a matter of fact they had made arrangements for proper representation before the court through

another counsel. Owing to unavoidable absence of the counsel engaged to conduct the case and only owing to an inadvertent omission on his part the order happened to be passed.

2. Having heard counsel on both sides, we are satisfied that it is only in the interests of justice that the parties are given a fresh opportunity before the court below. We set aside the order dated 20-11-2006 in I.A.No.665/2006 in O.S.No.32/2000 on the file of the Sub Court, Ottappalam with a direction to the Sub Court to consider the matter afresh and pass appropriate orders after affording a reasonable opportunity to the parties. The parties shall appear before the court below on 28-3-2007.

The appeal is allowed as above.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.